



D a v i s G r a h a m & S t u b b s L L P

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August 15, 2012

**SENT VIA E-MAIL**

Freedom of Information Officer (6MD-OE)  
U.S. EPA, Region 6  
1445 Ross Avenue  
Dallas, Texas 75202-2733  
[r6foia@epa.gov](mailto:r6foia@epa.gov)

Re: Jackpile-Paguate Mine Site FOIA Request, RIN: 06-FOI-00507-12

Dear Ms. Lane:

Atlantic Richfield Company ("AR") writes to refine its FOIA Request relating to the Jackpile-Paguate Mine Site ("Jackpile" or "Site") following my conversation with Pamela Travis of EPA Region 6 on August 2nd, 2012. I will address each of Ms. Travis' concerns below:

- 1) EPA estimates that the cost for conducting this FOIA request will be \$1,300.00. AR agrees to pay up to \$1,500.00 to search for the requested records.
- 2) AR has the following documents in its possession, and does not request that EPA produce these documents. However, AR maintains its request that any records that "refer to, relate to, or otherwise address or concern" these documents be produced by EPA:
  - a. The October 1986 Environmental Impact Statement for Jackpile-Paguate Uranium Mine Reclamation Project;
  - b. The Lease Termination Agreement entered into between the Pueblo, Bureau of Land Management, Bureau of Indian Affairs and Anaconda in 1986; and
  - c. The September 2007 Record of Decision (ROD) Compliance Assessment for the Mine Site.

- 3) As discussed with Ms. Travis, EPA has obtained a significant number of documents from the Pueblo of Laguna ("Pueblo") related to the Site. These documents were not obtained under a confidentiality agreement with the Pueblo, however, some are stamped "confidential." AR does not agree that these documents are confidential or subject to confidential treatment under FOIA's Exemption 4, 5 U.S.C. § 552(b)(5), or EPA regulations protecting "confidential business information." 40 CFR §§ 2.201-2.215. AR's request does not seek disclosure of "business information," which "pertains to the interests of [a] business," but analyses, reports and other documentation prepared specifically for disclosure of mine operation and reclamation activities to third parties. 40 CFR § 2.201(c). In addition, contrary to CERCLA's confidentiality provisions, many of these documents have been disclosed to other persons in the past, and the disclosure of these documents to AR would not cause substantial harm to the competitive ability of the Pueblo. 42 U.S.C. § 9604(e)(7)(E). Finally, CERCLA does not provide for confidentiality with respect to the requested documents because they relate to hazardous substances at the Site, including the location of disposal of hazardous substances, monitoring data and analysis, hydrogeologic and geologic data, and/or groundwater monitoring data. *Id.* at § 9604(e)(7)(F). As such, AR maintains its request that these records be produced along with the other requested records.
- 4) EPA has identified a significant number of internal EPA e-mails relating to the Site. AR does not request production of internal EPA e-mails relating to the Site at this time.
- 5) AR understands that EPA will likely produce duplicates of some historical documents due to the difficulty of removing these documents.
- 6) AR does not request production of document drafts at this time.
- 7) AR does not request a log of attorney work product and privileged documents. However, AR maintains its request that EPA produce a log of all documents withheld under FOIA's "decision process" exemption. As noted by Ms. Travis during our call, it is unlikely that there will be a substantial number of records that are subject to the "decision process" exemption due to the nature of the Site. AR agrees with this assessment, and we reiterate our request that the June 22, 2010 MOU between EPA and the Pueblo of Laguna be produced. This MOU is a final document between two unrelated parties, and is not an "inter-agency memorandum" protected under FOIA's Exemption 5. *See* 5 U.S.C. § 552(b)(5).

Freedom of Information Act Officer (6MD-OE)

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While AR has reduced the scope of its FOIA Request, it reserves the right to request additional documents at any time in the future. If you have any additional questions, you may contact me at the following telephone number: 303-892-7382.

Sincerely,

A handwritten signature in black ink, appearing to read "Doug Vilsack", with a long horizontal flourish extending to the right.

Douglas J. Vilsack

for

DAVIS, GRAHAM & STUBBS LLP

cc: Brian S. Johnson  
James L. Lucari  
William J. Duffy  
Pamela Travis (EPA)